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November 20, 2007

**VIA HAND DELIVERY AND ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte*, Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172**

Dear Ms. Dortch:

Penn Telecom, Inc. ("Penn Telecom") provides a variety of high quality, competitively priced voice and broadband services primarily to small and medium-sized business customers in the Pittsburgh MSA. Penn Telecom operates exclusively in that market. The attached Declaration of Kevin J. Albaugh, Vice President Regulatory, Penn Telecom, and Attachments, provide detailed information on the scale and scope of Penn Telecom's competitive facilities in the Pittsburgh MSA. As explained in the Declaration, it is not economically feasible in the Pittsburgh MSA, as elsewhere, for competitive carriers to construct a ubiquitous overbuild network or even to extend competitive facilities to more than a few customer locations. The Declaration explains that elimination of the availability of unbundled access to network elements in the Pittsburgh MSA would force Penn Telecom to scale back significantly, ceasing to serve most if not all of its small and medium enterprise customers. The result of grant of Verizon's petition for the Pittsburgh MSA would be that these customers would no longer have any viable choice other than Verizon's higher priced voice and broadband services.

Please associate this Declaration with the record in this proceeding. Under separate cover and in accordance with the Second Protective Order in this proceeding,<sup>1</sup> copies of the presentation that included Highly Confidential Information subject to the Second Protective Order are being provided to Gary Remondino, and electronic copies are being provided to Jeremy Miller and Tim Stelzig of the Wireline Competition Bureau.

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<sup>1</sup> *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172, Order, 22 FCC Rcd 892, DA 07-208, ¶ 15 (WCB rel. Jan. 25, 2007) ("Second Protective Order").*

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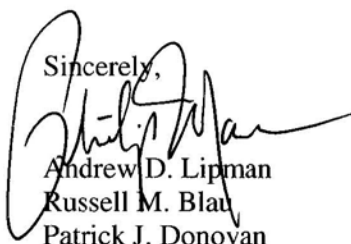
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November 20, 2007  
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To the extent any party wishes to access the Highly Confidential Information associated with this filing, it should send its request to Christine Johnson (christine.johnson@bingham.com) and Nguyen Vu (nguyen.vu@bingham.com) along with executed Acknowledgements of Confidentiality associated with the Second Protective Order.

A date stamp and return copy of this filing is enclosed as well. Please mark it for such purposes and return it to the courier. Should you have any questions about this filing, please contact me.

Sincerely,



Andrew D. Lipman  
Russell M. Blau  
Patrick J. Donovan  
Philip J. Macres

*Attorneys for*

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DSLnet Communications, LLC;  
Eureka Telecom, Inc. d/b/a  
InfoHighway Communications;  
ITC^Deltacom Communications, Inc.;  
McLeodUSA Telecommunications  
Services, Inc.;

MegaPath, Inc.  
Mpower Communications Corp.;  
Norlight Telecommunications, Inc.;  
Penn Telecom, Inc.;  
RCN Telecom Services, Inc.;  
RNK Inc.;  
segTEL, Inc.;  
Talk America Holdings, Inc.;  
TDS Metrocom, LLC; and  
U.S. TelePacific Corp. d/b/a  
TelePacific Communications

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Tim Stelzig (via e-mail)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Petitions of Verizon Telephone Companies for ) WC Docket No. 06-172  
Forbearance Pursuant to 47 U.S.C. § 160(c) in )  
the Boston, New York, Philadelphia, Pittsburgh, )  
Providence and Virginia Beach Metropolitan )  
Statistical Areas )

**DECLARATION OF KEVIN J. ALBAUGH**

1. My name is Kevin J. Albaugh. I am Vice President, Regulatory of Penn Telecom, Inc. ("Penn Telecom"). My business address is 4008 Gibsonia Road, Gibsonia, Pennsylvania 15044. I joined Penn Telecom in 1996. I have over 30 years of experience in the telecommunications industry. During that time I have held management positions of increasing responsibility in the area of sales, rates and tariffs, revenue requirements, intercompany relations and regulatory policy. During that period, I was employed by a number of incumbent local exchange carriers including Mid-Continent Pennsylvania, Alltel-Northeast Region and finally North Pittsburgh Telephone Company (NPTC). NPTC is an affiliate of Penn Telecom. At NPTC I am also the Vice President of Regulatory Affairs with duties similar to those that I provide for Penn Telecom. I have factual knowledge relating to the information discussed in this Declaration.

2. Penn Telecom is an edge-out CLEC that operates exclusively in the Pittsburgh MSA. The company is headquartered in Cranberry Twp., PA and as of today, employs 110 people. Our product portfolio includes traditional local and long distance service, 800 service, calling cards, PRIs, DSL, Internet access, broadband data, Metro-Ethernet and VoIP. Penn

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Telecom's primary focus is on the small and medium enterprise space as well as a limited number of MDU developments.

3. Penn Telecom's value proposition is based on the fact that we are committed to providing quality telecommunications services in a single market at competitive prices. Through our association with our affiliate the incumbent local exchange carrier (ILEC) North Pittsburgh Telephone Company, we have been able to implement our edge-out strategy as we build out our network in a cost effective manner. By initially purchasing certain services, such as switching capability, from our ILEC affiliate, we have been able to leverage our ILEC affiliate's 100 year telecom legacy to establish ourselves as the home-town intramodal choice for competitive business services in the Pittsburgh metro market. Our high quality bundled voice and broadband data networking capabilities, especially our Metro-Ethernet services, are relatively unique in this market.

4. As part of our cost efficient edge-out strategy Penn Telecom has established multiple collocations and primarily utilizes unbundled network elements to reach our customer base throughout the Pittsburgh Metro area. We have our own switching and data network and have utilized long term fiber leases from a third party to create our own backbone network. However, the critical last-mile local loop facilities that extend to all end user locations in our addressable market remain a key investment challenge. For Penn Telecom to invest in duplicating those facilities currently held by the incumbent ILEC Verizon during our initial ramp up would have been, and remains, cost prohibitive. Hence the leasing of unbundled network elements from the incumbent Verizon is obviously the only choice in the market if we wish to be able to compete effectively in the Pittsburgh metro market. In those instances when unbundled network elements

are unavailable, Penn Telecom will order the element via Special Access, but, as explained further below, at a much greater cost.

5. **[Begin Highly Confidential]**

**[End Highly Confidential]** The Pittsburgh MSA covers seven counties in Southwestern Pennsylvania. According to the U.S. Census Bureau 2002 Survey of Business Owners, there are 46,756 “employer firms” within the MSA. Penn Telecom’s existing network does not cover the entire MSA, but does encompass those areas that have the most dense concentration of the business market that we address. Over 30,000 potential “employer firms” exist within the footprint of our operation. Since the Census Bureau defines an “employer firm” as one with a payroll, and therefore employees, we assume this category to be a fair indicator of the small and medium enterprise market in the Pittsburgh MSA and therefore our potential addressable customer base. Even though Penn Telecom has chosen to serve those areas in the Pittsburgh Metro market that are most densely populated, still our customers are scattered across a large geography, resulting in a much lower density of customers served per square mile than that experienced by Verizon whose facilities benefit from being ubiquitous. This low-density service market is not conducive to the economical construction of alternative facilities, especially by a single provider.

6. **[Begin Highly Confidential]**

**[End Highly Confidential]**

7. Attachment 1 to this Declaration provides a schematic representation of Penn Telecom's general use of UNE loops in the Pittsburgh MSA. Attachment 2 provides a graphic presentation of the facilities Penn Telecom uses to generally provision voice-grade services and shows that **[Begin Highly Confidential]**

**[End Highly Confidential]**

8. Verizon has repeatedly presented proposals to Penn Telecom to convert our UNE DS-1 facilities to special access. **[Begin Highly Confidential]**

**[End Highly Confidential]** Moreover, if Penn

Telecom's DS0 UNEs were converted to commercial arrangements, Penn Telecom's increase in cost would be even higher. In this respect, since Verizon has failed to offer a commercial agreement for DS0/copper loop alternatives and despite numerous requests made for one, it is expected that Verizon would increase rates for basic copper loops by a significant amount if the Commission relieves it of offering these facilities in the Pittsburgh MSA.

9. Due to the highly competitive nature of the intramodal market and Verizon's ability to charge lower retail rates than the wholesale rates that Verizon has quoted to Penn Telecom for essentially the same facility, it would be impossible for Penn Telecom to recoup these increases through increases in retail pricing to end users. The competitive market has driven retail prices down to the point that the cost of a single special access facility would exceed the total revenue available from most of the customers that we serve via DS-1 facilities. Except for the last mile loop bottleneck facilities that are owned and provisioned by Verizon and for which Verizon is able to charge exorbitant rates if unchecked by this Commission, there are no excessive margins in the Pittsburgh voice and broadband markets, especially with the prevalence of flat-rate, unlimited calling plans. Should Verizon be successful in eliminating intramodal CLEC access to these last mile local loop and DS-1 facilities at the lower UNE rates, it is certain that Penn Telecom as well as other CLECs operating in the Pittsburgh Metro area would be unable to maintain any level of profitability while absorbing the drastically increased costs. Consequently Penn Telecom would be forced to scale back significantly, ceasing to serve most if not all of our small and medium enterprise customers. The result would be that these customers would no longer have any viable choice other than Verizon for their voice and broadband services, essentially forcing them back to the single option of Verizon's retail services at higher rates.

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10. Based on my experience at Penn Telecom and in the telecommunications industry, it will take some time for a fully competitive facilities-based environment to develop with more than two large players in each MSA. The capital costs necessary to achieve a truly independent network are staggering. While the costs of technology for both switching and transport do continue to decline, the market still lacks a viable alternative access network provider that can offer ubiquitous access over last mile loop facilities that will reach 100% of the addressable market. Obviously the most efficient approach is a neutral provider who can share the costs among many buyers. The requirement that Verizon continue to offer reasonably priced access to the unbundled loops in the Pittsburgh market is a viable alternative in the meantime, until facilities-based competitors can reach the scale necessary to serve the entire market.

11. The typical small business customer served by Penn Telecom has seen his or her rates for telecommunications services plunge by 20-50% since the introduction of competition in the Pittsburgh Metro market. This competition, however, is only viable in the small and medium enterprise space through the continued availability of the incumbent Verizon last-mile facilities at TELRIC compliant prices. It is Penn Telecom's experience that the vast majority of the small and medium enterprise market is reachable only by reasonable access over Verizon facilities. Absent the existing unbundled element arrangements, Penn Telecom would be forced to cease providing service to many of our small customers, robbing them of any competitive choice.

12. Verizon cites the existence of a fully facilities-based CATV provider in the market. There is no denying that Comcast and other CATV providers have begun to offer competitive voice services – but primarily in the residential space. Their provision of business services, while growing, has, in our opinion, not yet won broad acceptance in the SME market. In addi-



tion, the CATV market has no obligation to provide wholesale facilities to other providers, and has in fact made a very public point of maintaining an exclusive and closed network.

13. Should Verizon succeed, only a small handful of larger customers who are located within reach of the limited number of third party facilities would retain any modicum of competitive choice. This small subset of customers command the most competitive prices and attract all of the providers in the market due to the size of their communications budget. These customers are already reaping a tremendous benefit from the Telecommunications Act – their monthly spend has justified the construction of alternate fiber facilities by the likes of Duquesne Communications and Fibertech Networks (the only two third party providers in the Pittsburgh MSA market – albeit with far from ubiquitous facilities). However, the threshold of economics to justify the construction and or leasing of fiber facilities to these customers is a very high bar.

14. To make matters worse and as the press reports, Verizon is removing the legacy copper plant to a customer upon the installation of FiOS, essentially trapping the customer in a technology choice that will most likely have escalating costs over the next 12 to 24 months.<sup>1</sup> Without access to a copper loop, competitive providers, other than the CATV provider, are unable to offer choices to these residential and business users, removing yet another free-market force

15. Penn Telecom respectfully requests that the Commission continue to require Verizon to provide access to unbundled network elements at TELRIC-based rates and under other reasonable terms and conditions as required under current rules. Such action will benefit the

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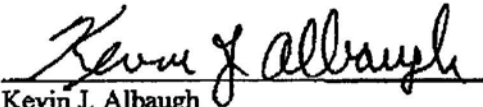
<sup>1</sup> [http://www.usatoday.com/tech/products/services/2007-07-08-verizon\\_N.htm](http://www.usatoday.com/tech/products/services/2007-07-08-verizon_N.htm)

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public interest by preserving the benefits of the choice and lower prices that will result from continuing to foster a vibrant intramodal competitive market.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed November 20, 2007

  
Kevin J. Albaugh

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# **ATTACHMENT 1**

Service. Savings. Simplicity.



Network Overview  
[BEGIN HIGHLY CONFIDENTIAL]

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# **ATTACHMENT 2**

Service. Savings. Simplicity.



Line Percentages  
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